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DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

[Request for Reconsideration]
FILE: B-193177.2

DATE: January 19, 1981

MATTER OF: Honeywell Information Systems, Inc.--
Reconsideration

DIGEST:

1. Prior decision upholding agency's cancellation of solicitation is affirmed where request for reconsideration fails to advance factual or legal grounds upon which reversal would be warranted.
2. Protester alleging bad faith in agency decision to cancel solicitation has not met its very heavy burden of meeting judicially established standard of "well-nigh irrefragable proof" where record reflects at worst agency inexpertness and inefficiency. Further, unfair or prejudicial motives will not be attributed to procuring officials on basis of inference or supposition.

Honeywell Information Systems, Inc. has requested reconsideration of our decision, Honeywell Information Systems, Inc., B-193177.2, December 6, 1979, 79-2 CPD 392, which denied Honeywell's protest of the cancellation of request for proposals (RFP) No. L/A 78-8 by the Department of Labor (DOL).

The details of the procurement, which are rather involved, are set forth in our earlier decision and will not be extensively repeated here. Briefly, the RFP, issued on February 8, 1978, was for an automated data processing system to upgrade DOL's Departmental Computer Center (DCC) to be capable of handling in-house approximately 90 percent of the entire agency's projected ADP requirements in furtherance of a policy objective originally established in 1975. Subsequently, on March 12, 1979, at which time Honeywell was the sole offeror, the Secretary of Labor approved canceling the RFP and phasing down the DCC to a telecommunications and smaller ADP processing facility with other ADP work

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to be performed by contract or interagency agreements. We found that DOL had made a rationally supportable management decision in abandoning the concept of a centralized in-house ADP capability represented by the expanded DCC and as envisioned by the RFP in favor of satisfying its ADP requirements by contract or interagency agreements. Accordingly, since DOL no longer needed the equipment encompassed by the RFP, we upheld the cancellation. We also stated, however, that DOL's action in bringing the procurement to an advance stage before canceling it did not enhance the competitive procurement system and we therefore recommended that the agency carefully evaluate its needs before issuing any future solicitation.

In its request for reconsideration, Honeywell again contends that the cancellation was "motivated by an illegal, arbitrary, capricious and unreasonable bias on the part of DOL to acquire compatible ADP equipment of the incumbent vendor [International Business Machines (IBM)]." In fact, Honeywell now maintains that the entire procurement was a "mere sham", that DOL concealed a pre-conceived decision to acquire only IBM compatible equipment on a non-competitive basis, and that the actions of DOL in canceling the solicitation therefore constituted "gross bad faith" on the part of DOL procuring officials.

As part of its reconsideration request, Honeywell has submitted for the record seven volumes of internal DOL memoranda, obtained under the Freedom of Information Act, detailing the history of the procurement (most of this material had been made available to our Office during our initial consideration of the protest) and one volume of GAO workpapers prepared by our audit staff in connection with an audit of DOL's ADP procurement practices. While Honeywell has presented numerous arguments in support of its contention that our earlier decision failed to consider various factors in concluding that the cancellation was proper, we intend to concentrate upon those matters we believe to be dispositive.

The protester's key contentions, and our analyses, are as follows:

1) GAO erred in characterizing Honeywell's allegations as a claim of bias against Honeywell. DOL's bias was aimed not solely at Honeywell but at any vendor which could not supply IBM compatible equipment.

GAO Analysis: On page two of our decision, we characterized Honeywell's claim of bias on the part of DOL procuring officials as one "in favor of IBM or a source offering IBM compatible equipment." Further, on page four of our decision, we stated that Honeywell asserted that the decision to cancel was brought about by the "reluctance of DOL component agencies to give up control of their individual ADP functions to the DCC where it appeared the successful vendor's equipment would not be IBM compatible." (Emphasis Added.)

2) DOL's memorandum, justifying cancellation, which formed the basis of the Secretary of Labor's decision to cancel the RFP is replete with references for the need for "compatible" equipment.

GAO Analysis: The memorandum was part of the original record and was duly considered in our earlier decision.

3) GAO failed to thoroughly review and analyze the agency's justification for the decision to cancel the RFP. A mere decision to act is insufficient; it must be accompanied by documented justification for the procurement action taken. Here, the decision to cancel was based in part on a mere "oral survey" without any proper documented justification.

GAO Analysis: In reviewing procurement actions, we look to see if the procurement action taken is supportable, not whether it was properly documented and supported at the time. See, e.g. EMI Medical Inc; Picker Corporation, B-195487, February 6, 1980, 80-1 CPD 96. In any event, our decision recognized the informal nature of the discussions conducted by DOL personnel prior to the cancellation. We found that the record, as a whole, supported DOL's determination to cancel the solicitation.

4) The A-76 report, with its workload analysis, although prepared in 1975, conclusively showed that computer capacity needed to be expanded by DOL to meet both current and future workload increases. In addition, it was clear from the report that all its projections were based on the use of IBM compatible equipment. In fact, the A-76 report and other internal agency documents show that DOL concealed a pre-conceived decision to acquire only IBM compatible equipment since, from its inception, the planned upgrade of the DCC was never viable from a cost-effectiveness standpoint on a basis other than the use of IBM compatible equipment. In short, the fundamental budgetary and policy justification for establishing a centralized in-house ADP capability was premised on the acquisition of IBM compatible equipment.

GAO Analysis: The A-76 report was part of the original record and was duly considered in our earlier decision. Most of the other documents referred to by the protester were also part of the record in our consideration of the protest. Since DOL's existing ADP equipment was acquired from IBM, we do not believe that simply because the initial planning, budgetary or otherwise, for the upgrade of the DCC was based on IBM compatible equipment establishes in any way bias on the part of DOL officials in the subsequent competitive procurement that was conducted or in its cancellation. In this regard, we must emphasize that unfair or prejudicial motives will not be attributed to individuals on the basis of inference or supposition. A.R.F. Products, Inc., B-186248, December 30, 1976, 76-2 CPD 541.

5) GAO based its decision on the "appearance" and "belief" that a centralized computer facility was no longer viable and represented neither the most economical approach to meeting DOL's ADP requirements or the most current assessment of DOL's actual needs.

GAO Analysis: Our factual findings were based in large part on the statements of DOL in its agency report on the protest in which it was stated that the cancellation of the solicitation was the result of "a change in the direction of ADP policy by DOL" since DCC workload projections used in developing the solicitation requirements had substantially eroded and were no longer valid as well as on certain internal DOL documents submitted by Honeywell. It is our view that these materials as well as those submitted later support our conclusion.

With regard to Honeywell's specific allegation of bad faith on the part of procuring officials in canceling the solicitation, we have held that to support a finding of bad faith the record must show, in the words of the Court of Claims, "well-nigh irrefragable [irrefutable] proof" that the agency had a malicious and specific intent to injure the party alleging bad faith. Kalvar Corporation, Inc. v. United States, 543 F.2d 1298, 1301 (Ct. Cl. 1976); see Bradford National Corporation, B-194789, March 10, 1980, 80-1 CPD 183. We do not believe that the record supports that conclusion here. In our prior decision, we pointed out that DOL's action in bringing the procurement to an advance stage before canceling it did not enhance the competitive procurement system and that it would have been prudent for DOL to have conducted another survey of the component agencies' needs when more than two years had elapsed between the initial decision to expand the DCC and the issuance of the RFP. In our view, DOL's action reflects at worst varying degrees of inexpertness and inefficiency. The record is completely devoid of any "irrefragable" proof of bad faith on the part of any DOL personnel.

Since Honeywell has not demonstrated any error of fact or law in our earlier decision, that decision is affirmed.

Milton J. Fowler

For the Comptroller General
of the United States